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15 **UNITED STATES DISTRICT COURT**  
16 **FOR THE DISTRICT OF NEVADA**

17 UNITED STATES OF AMERICA, ) Case No. 2:20-cv-00367-APG-EJY  
18 Plaintiff, )  
19 v. ) **STIPULATED DISCOVERY PLAN  
M. DAVID FESKO, ) AND SCHEDULING ORDER**  
20 Defendant. )  
21 )  
22 ) **SPECIAL SCHEDULING REVIEW  
REQUESTED**

23 Pursuant to F.R.C.P. 26(f) and L.R. 26-1, counsel for the parties held a Discovery  
24 Conference on May 5, 2023. Plaintiff United States and Defendant Taylor Waite, the Special  
25 Administrator of the Estate of M. David Fesko (collectively, the "Parties"), through their  
26

1                   counsel, conducted a Rule 26(f) conference on May 5, 2023, and hereby submit their Stipulated  
2                   Discovery Plan and Scheduling Order pursuant to F.R.C.P 16 and 26, as well as L.R 16-1 and  
3                   26-1.

4                   **L.R. 26-1(b) Applicable Deadlines**

5                   (1)           Discovery Cut Off Date. The defendant filed an Answer in this matter  
6                   on April 7, 2023. 180 days from April 7, 2023 is October 4, 2023. Rather than a discovery  
7                   cut off date of October 4, 2023 as contemplated in L.R. 26-1(b)(1), the Parties request an  
8                   approximately 180-day extension up-to-and-including April 1, 2024. The Parties agree and  
9                   contend that such an extension is merited because of the complexity of the case and the fact  
10                  that the assessed accountholder, M. David Fesko, is deceased. In addition to the potential  
11                  challenge of locating relevant documents and witnesses without the aid of the deceased  
12                  accountholder, foreign discovery may be necessary since the crux of the case involves the  
13                  formation of foreign entities, opening of foreign financial accounts in the name of those foreign  
14                  entities, and use of those foreign financial accounts. Additionally, expert testimony may be  
15                  necessary, and the extended discovery period allows for the exchange of expert reports, as well  
16                  as all fact and expert discovery.

17                  (2)           Amending the Pleadings and Adding Parties. Motions to amend pleadings  
18                  and motions to add Parties shall be made 90 days before the close of discovery, i.e., January 2  
19                  2024.

20                  (3)           Expert Witness Disclosures. The disclosure of any expert witnesses shall  
21                  be no later than: January 16, 2024. The disclosures of any rebuttal experts shall be no later  
22                  than: March 4, 2024. The requirements of F.R.C.P. 26(a)(2)(B) shall apply to any such  
23                  disclosures. The extension of time is needed for the Parties to have sufficient time to find and  
24                  retain rebuttal experts, and procure the necessary rebuttal disclosures, should it become  
25                  necessary if they have not otherwise retained an expert witness.

(4) Dispositive Motions. Dispositive motions shall be filed no later than 30 days after the discovery cut-off date: **May 1, 2024.**

(5) Pretrial Order. The Joint Pretrial Order (including F.R.C.P. 26(a)(3) disclosures by the Parties) shall be filed no later than 30 days after the Dispositive Motion Deadline: May 31, 2024. However, in the event that dispositive motions are filed, the date for filing the Joint Pretrial Order (including F.R.C.P. 26(a)(3) disclosures by the Parties) shall be suspended until 30 days after a decision on the dispositive motions or further order of the Court. Also, once the Parties' F.R.C.P. 26(a)(3) disclosures are made, the Parties' objections, if any, to the disclosures shall be made no later than 14 days after the disclosures are made in conformity with F.R.C.P. 26(a)(3)(B).

(7)        Alternative Dispute Resolution. The Parties certify that prior to the May 5, 2023 conference, counsel had been involved in extensive global settlement discussions that would have resolved not only the liabilities at issue in this case, but all IRS liabilities owed by M. David Fesko. Those discussions culminated in a settlement conference, convened on two different dates, in M. David Fesko's bankruptcy case in the United States Bankruptcy Court for the District of Nevada. A global settlement could not be reached. As a result of those discussions, the Parties agree that a decision about ADR should be deferred. The Parties will continue to discuss settlement and can request a settlement conference at a later date if necessary.

(8)        Alternative Forms of Case Disposition. The Parties certify that their counsel also met and conferred regarding trial by a magistrate judge under 28 U.S.C. § 636(c) and F.R.C.P. 73 and the use of the Short Trial Program (General Order 2013-01). The Parties do not consent to trial by a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). Additionally, the Parties do not consent to using the Short Trial Program pursuant to General Order 2013-01.

1                   **FRCP 26(f)(3) Discovery Plan**

2                   (A)         The Parties shall make their initial disclosures 42 days from the date of the  
3 Rule 26(f) conference - on or before June 16, 2023. The extension of time is necessary due to  
4 the Parties' counsels' travel and work schedules.

5                   (B)         The Parties shall conduct discovery on all claims and affirmative defenses  
6 pursuant to the Federal Rules of Civil Procedure. Discovery will include interrogatories,  
7 requests for production of documents, requests for admission, depositions, and third-party  
8 subpoenas. Discovery does not need to be conducted in phases or limited or focused on  
9 particular issues.

10                  (C)         There are no anticipated issues as to disclosure, discovery, or preservation of  
11 electronically stored information.

12                  The Parties do not anticipate that their claims or defenses will involve extensive  
13 electronically stored information (“ESI”). To the extent ESI exists, the Parties have agreed to  
14 preserve their respective information, both paper and email, and have identified possible  
15 custodians. The United States is preserving the IRS’s file associated with its assessment of the  
16 civil willful FBAR penalties at issue in this case. Defendant has requested that John Fesko  
17 preserve responsive emails and documents, including but not limited to, his assistance with filing  
18 amended federal income tax returns for M. David Fesko for tax years 2007 through 2010 and the  
19 IRS’s subsequent examination of those amended income tax returns and M. David Fesko’s  
20 failure to file FBARs.

21                  The Parties agree that the following categories of electronically stored information need  
22 not be preserved: (1) deleted, slack, fragmented, or other data only accessible by forensics; (2)  
23 random access memory (RAM), temporary files, or other ephemeral data that are difficult to  
24 preserve without disabling the operating system; (3) on-line access data such as temporary  
25 internet files, history, cache, cookies, and the like; (4) data in metadata fields that are frequently  
26 updated automatically, such as last-opened dates; (5) back-up data that are substantially  
27 duplicative of data that are more accessible elsewhere; (6) server, system, or network logs; (7)

1 data remaining from systems no longer in use that is unintelligible le on the systems in use; and  
2 (8) electronic data (e.g. emails, calendars, contact data, and notes) sent to or from mobile devices  
3 (e.g., iPhone, iPad, Android, and Blackberry devices), provided that a copy of all such electronic  
4 data is routinely saved elsewhere (such as on a server, laptop, desktop computer, or “cloud”  
5 storage).

6 The Parties agree to produce information in PDF format, unless the need arises for an  
7 alternative production format, at which point the Parties will discuss other forms of production.

8 (D) There are no known issues as to claims of privilege or protection. The Parties  
9 agree that claims of privilege shall be made on privilege logs and that there is no need for a Fed.  
10 R. Evid. 502(d) order.

11 (E) No changes should be made in the limitations of discovery imposed under Federal  
12 Rules of Civil Procedure or local rules.

13 (F) There are no other issues that the court should consider at this time.

14 Dated: May 22, 2023.

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Administrator for the Estate of  
M. David Fesko*

## **SCHEDULING ORDER**

After full consideration of the above, the Court hereby orders that the Discovery Plan and Scheduling Order shall be the Scheduling Order of this Court.

## IT IS SO ORDERED.

DATED: May 22, 2023

Elayna J. Youchah  
THE HONORABLE ELAYNA J. YOUCRAH  
UNITED STATES MAGISTRATE JUDGE